

1 Elaine A. Ryan (*Admitted Pro Hac Vice*)
2 Patricia N. Syverson (Bar No. 203111)
3 BONNETT, FAIRBOURN, FRIEDMAN
4 & BALINT, P.C.
5 2901 N. Central Avenue, Suite 1000
6 Phoenix, AZ 85012
7 Tel: (602) 274-1100
8 Fax: (602) 274-1199

9 Attorneys for Plaintiff Lorean Barrera

10 René P. Tatro (State Bar No. 78383)
11 David B. Sadwick (State Bar No. 126268)
12 Juliet A. Markowitz (State Bar No. 164038)
13 TATRO TEKOSKY SADWICK LLP
14 333 S. Grand Avenue, Suite 4270
15 Los Angeles, CA 90071
16 Telephone: (213) 225-7171
17 Facsimile: (213) 225-7151

18 Attorneys for Defendant Pharmavite, LLC

19 [Additional Counsel Listed on Signature Page]

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 LOREAN BARRERA, On Behalf of
23 Herself and All Others Similarly Situated
24 and the General Public,

25 Plaintiff,

26 v.

27 PHARMAVITE, LLC, a California
28 limited liability company,

Defendant.

Case No. 2:11-cv-04153-CAS (AGrx)

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Courtroom: 5 – 2nd Floor
Judge: Honorable Christina A. Synder

24 GOOD CAUSE APPEARING THEREFOR, in light of the Stipulation For
25 Entry Of Protective Order by and between Plaintiff Lorean Barrera and defendant
26 Pharmavite, LLC (“Pharmavite”), the Court enters this Protective Order in regard to
27 certain discovery material to be made available by Pharmavite. This discovery
28 material includes trade secrets and confidential, proprietary and non-public

documents and information, the public disclosure of which could be detrimental to the interests of Pharmavite and/or related corporate entities; documents which may contain information that is personal and confidential to third parties, including individuals; and documents and information subject to a claim of privilege or immunity from discovery (including but not limited to attorney-client privilege, work product immunity, and immunities created by federal or state statute or regulation). The parties have stipulated that the above-described documents and information, including electronically stored information, should be given the protection of an order of this Court to prevent irreparable harm through disclosure to persons other than those persons involved in the prosecution or defense of this litigation. This Protective Order shall govern certain documents, written discovery, and testimony obtained by the parties in connection with pre-trial proceedings in this action.

I. **DEFINITIONS**

1. **Disclosure or Discovery Material:** all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are voluntarily exchanged, produced or generated by any Party or non-party in disclosures or responses to discovery in this matter.

2. **“Confidential” Material:** information (regardless of how generated, stored, or maintained) or tangible things that a Designating Party believes in good faith constitutes or embodies matter used by it in or pertaining to its business, which matter is not generally known and which the Designating Party would not normally reveal to third parties or would cause third parties to maintain in confidence, and any other information that would qualify as Confidential pursuant to the applicable legal standard.

3. **“Highly Confidential–Attorneys’ Eyes Only” Material:** certain limited “Confidential” material or information that is competitively sensitive and constitutes or contains: (1) technical information such as product design, (2)

1 information within the definition of trade secret provided by state or federal law, (3)
 2 formulae or source code, (4) research and development information, (5) customer
 3 lists, (6) sales, cost, pricing, or other financial information, (7) plans for strategic
 4 business initiatives or marketing plans, or (8) any other information that contains the
 5 Designating Party's trade secrets or other confidential research, development, or
 6 commercial or financial information of an extremely sensitive nature that may cause
 7 significant competitive harm to the Designating Party if disclosed to persons other
 8 than those described in Section II, Paragraph 7, below.

9 4. **Protected Material:** any Disclosure or Discovery Material that is
 10 designated as "Confidential" or "Highly Confidential—Attorneys' Eyes Only."

11 5. **Expert:** a person with specialized knowledge or experience in a matter
 12 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
 13 an expert witness or as a consultant in this action and who has been approved to
 14 receive Protected Material in accordance with Section III, below.

15 6. **Professional Vendors:** persons or entities that provide litigation
 16 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
 17 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
 18 their employees and subcontractors.

19 **II. DESIGNATION AND TREATMENT OF PROTECTED MATERIALS**

20 1. In order to facilitate production of documents and other discovery in
 21 this matter, any Producing Party may, by written notice, or by a statement on the
 22 record at a deposition, designate any Disclosure or Discovery Material as
 23 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" (hereinafter
 24 "Highly Confidential"), under the terms of this Order.

25 2. By designating Disclosure or Discovery Material as "Confidential" or
 26 "Highly Confidential" the Designating Party is certifying to the Court that there is a
 27 good faith basis in both law and fact for the designation within the meaning of
 28 Federal Rule of Civil Procedure 26(g). Confidential Material shall be so designated

1 by clearly labeling, stamping or otherwise marking the top or bottom of each page of
2 the designated Material with the legend "CONFIDENTIAL" (the "Confidential
3 Legend"), including each page of any electronically produced document. Highly
4 Confidential Material shall be so designated by clearly labeling, stamping or
5 otherwise marking the top or bottom of each page of the designated Material with the
6 legend "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" (the "Highly
7 Confidential Legend"), including each page of any electronically produced
8 document. Any such stamp or designation shall not in any manner cover up, overlap
9 upon, obscure or otherwise conceal any text, picture, drawing, graph or other
10 communication or depiction in the document. In the case of Confidential
11 Information disclosed in a non-paper medium (*e.g.*, videotape, audiotape, computer
12 disks, etc.), the appropriate designation shall be affixed on the outside of the medium
13 or its container so as to clearly give notice of the designation.

14 3. Any Party or non-party may also designate testimony or exhibits, or
15 portions thereof, given in deposition or pre-trial proceedings as Confidential Material
16 or Highly Confidential Material, by having its attorney orally designate such
17 testimony or exhibits, or portions thereof, during the proceeding. The deposition or
18 court reporter shall be instructed to clearly mark the designated testimony, and each
19 designated exhibit with the Confidential Legend or Highly Confidential Legend, as
20 appropriate. Alternatively, any Party may designate testimony or exhibits, or any
21 portion thereof, as Confidential Material or Highly Confidential Material by
22 providing written notice to all parties within thirty (30) calendar days following
23 receipt of the transcript, of those portions of the transcript or exhibits which are to be
24 considered Confidential Material or Highly Confidential Material. During this
25 period of review, all transcripts will be automatically designated Highly
26 Confidential, labeled as such and accorded all protections for such material.

27 4. A Party may designate as "Confidential" or "Highly Confidential" any
28 material produced by a non-party by providing written notice to all parties within

1 thirty (30) calendar days after receiving such material, and providing a copy of the
2 material which the Designating Party has clearly labeled, stamped or otherwise
3 marked with the Confidential Legend or Highly Confidential Legend and the
4 additional words "as designated by [Party]", for example "CONFIDENTIAL as
5 designated by PHARMAVITE, LLC." This Stipulated Protective Order shall not
6 limit the ability of any Party or non-party to voluntarily disclose to others any
7 Protected Material that originates from that Party or non-party.

8 5. In the event that another Party disagrees with a Party's designation of
9 any document or information as "Confidential" or "Highly Confidential," the
10 objecting Party shall advise counsel for the Designating Party, in writing, of the
11 objection and identify the document or item with sufficient specificity to permit
12 identification. Within twenty (20) days of receiving the objection, the Designating
13 Party shall advise the objecting Party's counsel whether the Designating Party will
14 change the designation of the document or item. If this cannot be resolved between
15 the parties, then the dispute will be presented to the Court by motion or otherwise.
16 During the pendency of any such motion, the designated document or item shall
17 continue to be treated as a stamped "Confidential" or "Highly Confidential"
18 document and subject to the provisions of this Order. On the hearing of any such
19 motion, the burden shall be on the Designating Party to establish that the designated
20 document or item should be deemed "Confidential" or "Highly Confidential."

21 6. Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, the Receiving Party may disclose any information or item
23 designated "Confidential" only to "Qualified Persons," who are defined to consist
24 solely of:

25 a. The Receiving Party's Counsel in this action, as well as
26 employees of said Counsel to whom it is reasonably necessary to disclose the
27 information for this litigation;
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1 b. The officers, directors, owners, members, partners, trustees,
2 beneficiaries, and employees of the Receiving Party or named plaintiff(s), to whom
3 disclosure is reasonably necessary for this litigation;

4 c. Experts (as defined in this Stipulated Protective Order) of the
5 Receiving Party who have been approved in accordance with Section III, below, and
6 their administrative support staff if any, to whom disclosure is reasonably necessary
7 for this litigation and who have signed the "Acknowledgement And Agreement To
8 Be Bound By Protective Order" (Exhibit A);

9 d. The Court and its personnel;

10 e. Neutral evaluators, mediators or arbitrators assigned to the case
11 by the Court or retained for the case by the mutual agreement of the Parties;

12 f. Professional Vendors for services such as copying, scanning, or
13 electronic document processing to whom disclosure is reasonably necessary for this
14 litigation;

15 g. Court reporters and their staff to whom disclosure is reasonably
16 necessary for this litigation;

17 h. During their depositions, witnesses in the action to whom
18 disclosure is reasonably necessary and who have signed the "Acknowledgment And
19 Agreement To Be Bound" (Exhibit A), unless otherwise agreed by the Designating
20 Party or ordered by the Court; and

21 i. Any author or recipient of the document or the original source of
22 the information disclosed in the document.

23 7. Unless otherwise ordered by the Court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item
25 designated "Highly Confidential" only to those persons listed in Paragraph 6, (a),(c)
26 -(i), above.

27 8. Protected Material shall not be disclosed or furnished to any person
28 pursuant to paragraphs 6(c) and 6(h) unless that person is informed of this Order and

1 has signed the "Acknowledgement And Agreement To Be Bound By Protective
2 Order," appended hereto as Exhibit A. It shall be the obligation of counsel providing
3 the information to a Qualified Person to retain a copy of all agreements executed
4 pursuant to this paragraph until sixty (60) days following the final termination of
5 this litigation.

6 9. Protected Material must be stored and maintained by the Receiving
7 Party at a location and in a secure manner that reasonably ensures that access is
8 limited to Qualified Person(s) as defined by this Order.

9 10. The list of Qualified Person(s) to whom Protected Material may be
10 disclosed may be enlarged by written agreement of all counsel of record. If any
11 Party proposes to expand the list of Qualified Person(s), the parties will meet and
12 confer regarding such proposal. If the parties are unable to reach agreement, any
13 Party may bring the issue to the Court for resolution. Pending resolution by the
14 Court, the list of Qualified Person(s) will not be expanded, and no Protected Material
15 may be disclosed to additional person(s).

16 11. Nothing in this Stipulated Protective Order shall impose any restrictions
17 upon the use or disclosure by a Party or witness of any document, material, or
18 information obtained by such Party or witness independently of the discovery
19 proceedings in this action, whether or not such document, material, or information is
20 also obtained through discovery proceedings in this action.

21 12. Entering into, agreeing to, and/or complying with the terms of this
22 Stipulated Protective Order shall not:

23 a. Operate as an admission by any Party that any particular
24 document, material, or information contains or reflects currently valuable trade
25 secrets or proprietary commercial information; or

26 b. Prejudice in any way the right of a Party to seek a determination
27 by the Court whether any particular document, material, or information should be
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1 subject to the terms of this Stipulated Protective Order, such request and
2 determination to be made in accordance with paragraph 5 above; or

3 c. Operate as a waiver of any objection of either Party as to the
4 admissibility of a particular document into evidence. Nothing in this Order shall be
5 construed to require any Party to disclose to any other Party any Protected Material,
6 or to prohibit any Party from refusing to disclose Protected Material to any other
7 Party.

8 13. In the event that any Protected Material is demanded from a Receiving
9 Party by way of subpoena, court order or otherwise, that Receiving Party shall
10 immediately, and in no event more than three (3) court days, notify the Designating
11 Party by telephone and in writing of the demand. The notice given to the
12 Designating Party shall, in all events, be given before any production or disclosure of
13 Protected Material and shall include a copy of the subpoena or court order so as to
14 allow sufficient time for the Designating Party to challenge or resist such production
15 or disclosure.

16 14. No "Confidential" or "Highly Confidential" document(s) shall be filed
17 with the Court unless counsel secures a Court Order allowing the filing of the
18 document(s) under seal. An application to file a document under seal shall be served
19 on opposing counsel, and on the person or entity that has custody and control of the
20 document, if different from opposing counsel. If opposing counsel, or the person or
21 entity who has custody and control of the document, wishes to oppose the
22 application, he/she must contact the chambers of the judge who will rule on the
23 application, to notify the judge's staff that an opposition to the application will be
24 filed.

25 15. For any document, paper, exhibit, transcript or other thing filed or
26 lodged with the Court, or any portion thereof ("Record"), containing Confidential
27 Material and/or Highly Confidential Material that the Court finds may be filed under
28 seal, the Party filing such Record with the Court shall place the confidential portion

1 in a sealed envelope or other appropriately sealed container, with a label indicating
2 the title of this litigation, the nature of the contents, the Confidential Legend and/or
3 Highly Confidential Legend, and a statement which reads substantially as follows:
4 "THIS ENVELOPE CONTAINS CONFIDENTIAL INFORMATION [AND/OR]
5 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY INFORMATION AND
6 IS SEALED PURSUANT TO THE [DATE OF THIS PROTECTIVE ORDER]
7 ORDER OF THE COURT AT THE REQUEST OF [REQUESTING PARTY]. IT
8 IS NOT TO BE OPENED NOR ARE THE CONTENTS THEREOF TO BE
9 DISPLAYED OR REVEALED TO ANY PERSONS EXCEPT BY ORDER OF
10 THE COURT OR PURSUANT TO CONSENT OF THE PARTIES CLAIMING
11 CONFIDENTIALITY."

12 16. The foregoing is without prejudice to the right of any Party: (a) to
13 present a motion to the Court under Federal Rule of Civil Procedure 26(c) for a
14 further protective order relating to any Protected Material or relating to any
15 discovery in this litigation; (b) to object to the production of documents it considers
16 not subject to discovery; (c) to apply to the Court for an order compelling production
17 of documents or modification of this Order or for any order permitting disclosure of
18 Protected Material beyond the terms of this Order; or (d) to apply to the Court for an
19 order deeming Disclosure or Discovery Material not "Confidential" or "Highly
20 Confidential."

21 17. If a Producing Party inadvertently or unintentionally produces to a
22 Receiving Party any documents or information subject to a claim of privilege or
23 immunity from discovery (including but not limited to attorney-client privilege, work
24 product immunity, and immunities created by federal or state statute or regulation),
25 the Producing Party shall, within fifteen (15) days of the discovery of the inadvertent
26 production, give notice to the Receiving Party in writing of the Producing Party's
27 claim of privilege or immunity from discovery. Thereafter, the Receiving Party shall
28 immediately return to the Producing Party the original and all copies of the restricted

1 materials, including copies of the restricted materials disseminated to other persons
2 by the Receiving Party. The Receiving Party will be deemed to have notice that
3 material is restricted if the Party reasonably should recognize the material is
4 privileged or protected from discovery, or upon written notice by the Producing
5 Party. Such inadvertent or unintentional disclosure shall not be deemed a waiver in
6 whole or in part of the Producing Party's claim of privilege or immunity from
7 discovery either as to specific documents and information disclosed or on the same
8 or related subject matter. In the event that the Receiving Party disagrees with the
9 Producing Party's claim of privilege or immunity from discovery, then the Receiving
10 Party shall notify the Producing Party within five (5) business days of receipt of the
11 Producing Party's written notice of claim of privilege, and shall set forth the precise
12 grounds upon which the Receiving Party's position rests. If the parties cannot
13 resolve the matter, then the dispute will be presented to the Court by motion or
14 otherwise. During the pendency of any such motion, the Receiving Party shall not
15 copy, distribute, or otherwise use in any manner the disputed documents or
16 information, and shall instruct all persons to whom the Receiving Party has
17 disseminated a copy of the documents or information that the documents or
18 information are subject to this Order and may not be copied, distributed, or otherwise
19 used pending the motion and further notice from the Court.

20 18. If a Producing Party inadvertently or unintentionally produces to a
21 Receiving Party any document or information that the Producing Party failed to
22 designate as "Confidential" or "Highly Confidential," the Producing Party shall,
23 within thirty (30) days of the discovery of the inadvertent production, give notice to
24 the Receiving Party in accordance with the procedure above for reclaiming
25 inadvertently produced privileged documents. The retrieving Party shall re-produce
26 such documents or material, designating them "Confidential" or "Highly
27 Confidential" as described in paragraph 1 above, as soon as possible after retrieval
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1 and no later than ten (10) days after retrieval. As used in this Order, an act is
2 “timely” if it does not unduly prejudice another Party.

3 19. If the Receiving Party learns that, by inadvertence or otherwise, it has
4 disclosed Protected Material to any person or in any circumstance not authorized
5 under this Order, the Receiving Party shall immediately notify in writing the
6 Designating Party of the unauthorized disclosure and use its best efforts to retrieve
7 all copies of the Protected Materials. The Receiving Party shall inform the person or
8 persons to whom the unauthorized disclosures were made of the terms of this Order
9 and request that such person or persons execute the “Acknowledgement And
10 Agreement To Be Bound” (Exhibit A) to maintain the protections for material that
11 was improperly disclosed.

12 20. All Disclosure or Discovery Materials shall be used solely for the
13 purpose of this litigation. Except by consent of the Producing Party or order of the
14 Court, such discovery materials shall not be used by any Party other than the
15 Producing Party for any outside purpose, including, without limitation, any outside
16 business or outside commercial purpose. No duplications of documents stamped
17 “Confidential” or “Highly Confidential” shall be made except by counsel to provide
18 working copies and for filing in Court under seal.

19 21. The protections conferred by this Order cover not only Protected
20 Material, but also any information copied or extracted therefrom, as well as all
21 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations,
22 or presentations by Parties or Counsel to or in Court or in other settings that might
23 reveal Protected Material. All notes, memoranda, reports and other written
24 communications that reveal or discuss information contained in Protected Materials
25 shall be given the same protections under this Order as though they were designated
26 Protected Materials.

27 22. The provisions of this Order shall not terminate at the conclusion of
28 this lawsuit. Within 60 days after final conclusion of all aspects of this litigation,

1 documents stamped "Confidential" or "Highly Confidential," and all copies of same
2 (other than exhibits of record) either shall be destroyed or returned to the Producing
3 Party. In the event that documents stamped "Confidential" or "Highly Confidential"
4 are produced in electronic form, or are put into electronic form by the Receiving
5 Party with the consent of the Producing Party, then the Receiving Party shall delete
6 all electronic copies of stamped confidential documents from all computer systems,
7 disks, and other electronic medium and devices. All counsel of record shall make
8 certification of compliance herewith and shall deliver the same to counsel for the
9 Party who produced the documents not more than 120 days after final termination of
10 this litigation.

11 23. The final determination or settlement of this action as to any or all
12 parties shall not relieve any person who has received Protected Material from the
13 obligations imposed by this Order, and this Court shall retain jurisdiction after such
14 final determination or settlement to enforce the provisions of this Order. All persons
15 subject to the terms of this Order agree that this Court shall retain jurisdiction over
16 them for the purpose of enforcing this Order.

17 24. The Court may modify this Order for good cause, in the interests of
18 justice or for public policy reasons on its own initiative.

19 **III. EXPERTS AND CONSULTANTS**

20 Prior to disclosing any Protected Material to any outside experts or consultants
21 retained in connection with this litigation who are currently employees, officers,
22 directors, contractors, subcontractors or consultants of any entity that is presently
23 engaged in the research, development, manufacture or sale of any joint health dietary
24 supplement that does now or may in the future compete with Defendants, Plaintiff or
25 his counsel shall promptly so notify the Producing Party, including with such
26 notification: (i) the name of the person; (ii) the present employer and title of the
27 person; (iii) an up-to-date curriculum vitae of the person; (iv) a listing of consulting
28 projects undertaken by the expert or consultant within the last four (4) years; and (v)

1 an executed copy of the "Agreement to Be Bound by Protective Order" (Exhibit A);
2 and (vi) a current certification that the expert or consultant is not a current officer,
3 director, contractor or employee of a Party or of a competitor of a Party, nor
4 anticipated at the time of the certification to become an officer, director, contractor,
5 or employee of a Party or a competitor of a Party.

6 1. Within five (5) business days of receipt of the information described in
7 the paragraph above, the Producing Party may object in writing to the proposed
8 outside expert or consultant for good cause. In the absence of an objection during
9 the five-day period, the person shall be deemed approved under this Stipulated
10 Protective Order. If objection to disclosure is made within the time required, the
11 parties shall meet and confer via telephone or in person within five (5) business days
12 following the objection and attempt in good faith to resolve the dispute on an
13 informal basis. If the dispute is not resolved, the Party objecting to the disclosure
14 will have five (5) business days from the date of the meet and confer to seek relief
15 from the Court. If relief is not sought from the Court within that time, the objection
16 shall be deemed withdrawn. If relief is sought, designated materials shall not be
17 disclosed to the expert or consultant in question until the objection is resolved by the
18 Court.

19 2. For purposes of this section, "good cause" shall include, but not
20 necessarily be limited to, an objectively reasonable concern that the expert or
21 consultant, or someone associated therewith, will, advertently or inadvertently, use
22 or disclose confidential information outside of this litigation, or constitute an
23 unreasonable risk thereof. Experts or consultants authorized to receive Protected
24 Material under this section shall not be a current officer, director, contractor or
25 employee of a Party or of a competitor of a Party, nor anticipated at the time of
26 retention to become an officer, director, contractor, or employee of a Party or a
27 competitor of a Party.
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1 3. The parties agree that the terms of Section III are subject to revision as
2 this litigation proceeds. The parties shall meet and confer in good faith as to any
3 proposed revision(s) in this Section. Any revisions to this Order shall be effective
4 only upon entry by the Court of a modified stipulated protective order.

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6 **IT IS SO ORDERED.**

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ALICIA G. ROSENBERG
UNITED STATES MAGISTRATE JUDGE

Dated:

March 9, 2012

~~The Honorable Christina A. Snyder~~
~~United States District Court Judge~~

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER

I, _____, with an address of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order issued by the United States District Court for the Central District of California on _____, 201_, in the case captioned *Barrera v. Pharmavite, LLC*, 2:11-cv-04153-CAS (AGrx).

I agree to comply with and to be bound by all the terms of the Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt of court.

I will not utilize any stamped confidential document or other information subject to the Protective Order for any purpose other than this litigation. I further affirm that I will not reveal the confidential information to, nor discuss it with, anyone, except in accordance with the terms of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

At the termination of this litigation, I will return all documents marked "Confidential," or "For Counsel Only," or "Highly Confidential," as well as any copies, summaries or abstracts of them, and documents related to them, whether in hard copy, electronic, or digitized format, to the attorney providing confidential materials to me.

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1 I hereby appoint [NAME] of [FIRM NAME AND ADDRESS] as my agent
2 for service of process in connection with this action or any proceedings related to
3 enforcement of this Stipulated Protective Order.

4 Executed on _____, 201_, at [CITY AND STATE].

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6 Signature: _____
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